

Dispute Codes 55, 67, 72

Introduction

This hearing was convened in response to an application filed by the landlord seeking:

1. An Order of Possession;
2. A monetary order; and
3. Recovery of the filing fee.

Background and Evidence

The landlord testified that she served a 10 day Notice for Unpaid rent on the tenant on April 28, 2010 by way of posting the notice on the rental unit door and by sliding a copy of the same notice under the rental unit door. The landlord testified the tenancy began in August of 2009 and rent was fixed at \$580.00 per month. The landlord testified that the tenant has not paid rent for March, April, May or June 2010 and he owed \$100.00 from his February 2010 rent. The landlord says the total rent outstanding as of the end of June is \$2,420.00.

The landlord testified that she served the Application for Dispute Resolution hearing package by way of posting the package to the rental unit door.

Analysis

Section 89 of the Act sets out how an Application for Dispute Resolution may be served:

Special rules for certain documents

- 89** (1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
- (e) as ordered by the director under section 71 (1) *[director's orders: delivery and service of documents]*.

(2) An application by a landlord under section 55 *[order of possession for the landlord]*, 56 *[application for order ending tenancy early]* or 56.1 *[order of possession: tenancy frustrated]* must be given to the tenant in one of the following ways:

- (a) by leaving a copy with the tenant;
- (b) by sending a copy by registered mail to the address at which the tenant resides;
- (c) by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant;
- (d) by attaching a copy to a door or other conspicuous place at the address at which the tenant resides;
- (e) as ordered by the director under section 71 (1) *[director's orders: delivery and service of documents]*.

The tenant did not appear at this hearing. The evidence of the landlord is that she served the tenant with the Application for Dispute Resolution by posting it to the rental unit door. With respect to her application for a monetary award, this is not an acceptable form of service. I am therefore unable to grant that portion of the landlord's application seeking a monetary Order for rental arrears because I am not satisfied that the tenant has had proper notice of that claim. This application is therefore dismissed with leave to reapply.

However, with respect to that portion of the landlord's application seeking an Order of Possession under Section 55, the Act states that posting is an approved manner of service for such an application. I will therefore consider that portion of the landlord's application. In this regard, I find that the landlord is entitled to an Order for Possession. There is outstanding rent. The tenant has not made application pursuant to Section 46 to set aside the Notice to End a Residential Tenancy and the time to do so has expired. In these situations, the *Residential Tenancy Act* provides that the tenant(s) has/have been deemed to have accepted the end of the tenancy on the date set out in the Notice.

Filing Fees

As the landlord has been partially successful in her application, I will allow the landlord to recover the \$50.00 filing fee she has paid for this application. The landlord may deduct this sum from the tenant's security deposit.

Conclusion

The landlord is provided with a formal copy of an order of possession. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.